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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Greg Luke
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 14 th Floor Nashville, Tennessee
Phone:	(615) 532-0874
Email:	greg.luke@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	ADA Coordinator
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2 nd Floor Nashville, Tennessee
Phone:	1-866-253-5827 (toll free) or (615) 532-0200 Hearing impaired callers may use the TN Relay Service 1-800-848-0298.
Email:	Beverly.Evans@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Nashville Room, 3 rd Floor
Address 2:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue
City:	Nashville, Tennessee
Zip:	37243
Hearing Date :	January 29, 2014
Hearing Time:	9:00 a.m. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Teleconferencing Location(s): The public may teleconference the Nashville hearing at the following locations:

Address 1:	Memphis Environmental Field Office
Address 2:	8383 Wolf Lake Road
City:	Bartlett, Tennessee
Zip:	38133
Hearing Date :	January 29, 2014
Hearing Time:	9:00 a.m. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Address 1:	Jackson Environmental Field Office	
Address 2:	1625 Hollywood Drive	
City:	Jackson, Tennessee	
Zip:	38305	
Hearing Date :	January 29, 2014	
Hearing Time:	9:00 a.m.	<input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Address 1:	Chattanooga Environmental Field Office	
Address 2:	540 McCallie Avenue, State Office Bldg., Suite 550	
City:	Chattanooga, Tennessee	
Zip:	37402	
Hearing Date :	January 29, 2014	
Hearing Time:	10:00 a.m.	<input type="checkbox"/> CST/CDT <input checked="" type="checkbox"/> EST/EDT

Address 1:	Knoxville Environmental Field Office	
Address 2:	3711 Middlebrook Pike	
City:	Knoxville, Tennessee	
Zip:	37921	
Hearing Date :	January 29, 2014	
Hearing Time:	10:00 a.m.	<input type="checkbox"/> CST/CDT <input checked="" type="checkbox"/> EST/EDT

Address 1:	Johnson City Environmental Field Office	
Address 2:	2305 Silverdale Pike	
City:	Johnson City, Tennessee	
Zip:	37601	
Hearing Date :	January 29, 2014	
Hearing Time:	10:00 a.m.	<input type="checkbox"/> CST/CDT <input checked="" type="checkbox"/> EST/EDT

Additional Hearing Information:

The Tennessee Solid Waste Disposal Control Board has initiated this rulemaking process to make revisions to the Solid Waste Processing and Disposal regulations concerning waste reduction. The proposed amendments eliminate conflicts and confusion between statutory language and the existing rule and will help the regulated community to understand waste reduction. The amendments also bring improvements and consistency in solid waste planning, data collection and reporting, qualitatively assessing solid waste systems, and infrastructure development across the state that would be useful for industry and business. Solid waste planning. This planning is essential for local governments to have needed infrastructure to attract industry, meet their waste reduction goals, and protect the health and welfare of their citizens.

The Division has prepared a redline version of this notice of the Notice of Rulemaking Hearing to aid public review and comment on this notice. Copies of these initial draft rules (and its redline version) are available for review at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Field Offices located as follows:

Memphis Environmental Field Office
8383 Wolf Lake Drive
Bartlett, TN 38133
(901) 371-3000/ 1-888-891-8332

Cookeville Environmental Field Office
1221 South Willow Avenue
Cookeville, TN 38506
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Field Office
1625 Hollywood Drive
Jackson, TN 38305
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Field Office
Suite 550 - State Office Building
540 McCallie Avenue
Chattanooga, TN 37402-2013
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Field Office
1421 Hampshire Pike
Columbia, TN 38401
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Field Office
3711 Middlebrook Pike
Knoxville, TN 37921-5602
(865)594-6035/ 1-888-891-8332

Nashville Environmental Field Office
711 R. S. Gass Blvd.
Nashville, TN 37243-1550
(615) 687-7000/1-888-891-8332

Johnson City Environmental Field Office
2305 Silverdale Road
Johnson City, TN 37601-2162
(423) 854-5400/1-888-891-8332

The redline version of this Notice of Rulemaking Hearing can be accessed for review using
<http://tn.gov/environment/swm/ppo>.

Copies are available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation
Division of Solid Waste Management
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 14th Floor
Nashville, Tennessee
(615) 532-0780

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).
Appointments should be made for all file reviews.

Oral or written comments are invited at the hearing. Additionally, written comments may be submitted prior to or after the public hearing to: Division of Solid Waste Management; Tennessee Department of Environment and Conservation; Attention: Mr. Greg Luke; William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 14th Floor, Nashville, Tennessee; telephone 615-532-0874 or FAX 615-532-0886. However, such written comments must be received by the Division by 4:30 PM CDT, January 31, 2014, in order to assure consideration. For further information, please contact Mr. Greg Luke at the above address or telephone number or by e-mail at greg.luke@tn.gov.

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0400-11-01	Solid Waste Processing and Disposal
Rule Number	Rule Title
0400-11-01-.09	Waste Reduction and Planning

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0400-11-01
Solid Waste Processing and Disposal

Amendments

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by deleting paragraph (1) in its entirety and substituting instead the following:

(1) General Purpose

~~(a)~~ — The goal of the state is to reduce by twenty-five percent (25%) the amount of solid waste disposed of at the municipal solid waste disposal facilities and incinerators ~~by December 31, 2003~~, as measured on a per capita basis within Tennessee by weight. The goal shall also apply to each municipal solid waste region, but does not apply to individual disposal facilities or incinerators. Individual disposal facilities or incinerators are used only as measurement locations for assessing the achievement of a region's waste reduction efforts. As an alternative to calculating the waste reduction goal on a per capita basis, regions shall have the option of calculating the goal on an economic growth basis using the method prescribed by the Department and approved by the ~~Underground Storage Tank & Municipal Solid Waste Advisory Committee Disposal Control Board~~.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by deleting paragraph (4) in its entirety and substituting instead the following:

~~(4) — Qualitative Assessment Methods~~

~~(a) — An assessment method shall be developed by the Department of Environment and Conservation and approved by the Municipal Solid Waste Advisory Committee. This assessment will be applied to Municipal Solid Waste Planning Regions that failed to meet the twenty-five percent (25%) waste reduction and diversion goal stated in T.C.A. § 68-211-861(a) according to the 2003 Annual Progress Report submitted to the Division. The qualitative assessment will objectively assess the activities and expenditures of both the Municipal Solid Waste Planning Region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions that meet the goal and whether the failure is due to factors beyond the control of the region.~~

~~(b) — The qualitative assessment shall be done in the following two steps:~~

~~1. — The Department shall use the waste and diversion reported by the solid waste region for the most current reporting period to determine whether in that year twenty-five percent of the solid waste generated in that year was either diverted from class I facilities or recycled. If it was, the region meets the qualitative assessment and the department does not proceed to the next step.~~

~~2. — The Department shall evaluate the programs in those regions that do not satisfy subparagraph (2)(a) of this rule to determine if they are qualitatively equivalent to those that did meet the 25% recycling and diversion goal by evaluating at least the following solid waste program activities for the most current reporting period, giving the first two items the greatest weight:~~

~~(i) — waste reduction and recycling programs and systems;~~

~~(ii) — waste diversion programs and systems;~~

~~(iii) — solid waste education programs and systems;~~

~~(iv) waste collection and handling systems; and~~

~~(v) solid waste program budgets and staffing.~~

~~The methodology shall make comparisons between regions that are as similar as possible in terms of population and socio-economic level to the region that failed to meet the goal.~~

(4) Qualitative Assessment and Noncompliance

(a) A qualitative assessment, as defined below, will be applied to municipal solid waste regions that failed to meet the twenty-five percent (25%) waste reduction and diversion goal stated in T.C.A. § 68-211-861(a) based on data from the region's Annual Progress Report submitted to the Division. The qualitative assessment will objectively assess the activities and expenditures of both the municipal solid waste region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions similar in population and socio-economic level that meet the goal and whether the failure is due to factors beyond the control of the region.

(b) The Department shall evaluate the programs in those regions that do not satisfy this rule to determine if they are qualitatively equivalent to those that did meet the 25% recycling and diversion goal.

(c) Noncompliance Procedures

1. The review of solid waste regions identified to be qualitatively assessed by the Department shall be accomplished through the following methodology:

(i) The department shall use the submission of the municipal solid waste region's solid waste region's Annual Progress Report for the most current reporting period to determine whether twenty-five percent of the solid waste generated in that year was either diverted from class I facilities or recycled. If it was, the region meets the goal and the department does not proceed to the next step. The region is considered qualitatively equivalent.

(ii) Regions that are not found qualitatively equivalent in the first step shall continue the qualitative assessment and be compared to two other regions that are most equivalent in population and socio-economic level.

(iii) The department shall evaluate the programs in those regions that do not satisfy this rule to determine if they are qualitatively equivalent to those that did meet the 25% recycling and diversion goal by evaluating at least the following current solid waste program activities giving the first three items the greatest weight:

(I) waste reduction and recycling programs and systems;

(II) waste diversion programs and systems;

(III) the quality of the region's municipal solid waste plan;

(IV) solid waste education programs and systems;

(V) waste collection and handling systems;

(VI) solid waste program budgets and staffing; and

(VII) a cost benefit analysis of the waste reduction and recycling progress as well as the solid waste generation in the region.

- (iv) As part of the evaluation of subpart (iii) of this part, the department shall visit the region and meet with the appropriate officials from each local government to research and investigate programs and activities listed in subpart (ii) of this part.
 - (v) The department shall prepare a comprehensive report for the region providing an analysis of program activities, explaining findings, recommendations, and any required activities. The department shall meet with each local government in the region to review the comprehensive report and provide the region and its member local governments at least thirty (30) days to prepare a written response that shall be included in the final report prior to finalizing and publishing.
 - (vi) Findings. The department shall clearly identify to the region or the local governments assessed their status upon completion of the qualitative assessment. This status shall be one of the following:
 - (I) Qualitatively Equivalent – The local government or region is qualitatively equivalent to the comparison regions. This means that the systems and activities are equal to comparison counties but the region failed to meet the goal through no fault of their own.
 - (II) Marginally Qualitatively Equivalent – The local government or region is marginally qualitatively equivalent to the comparison regions. This means that some systems and activities are equal to comparison regions, but some are not. Further, the solid waste plan is not being followed and may be contributing to the goal not fully being attained. The Department for purposes of goal achievement shall deem the region or local governments as equivalent but may require remedial activities or need to follow-up to assist the region in strengthening efforts to attain the goal.
 - (III) Qualitatively Not Equivalent – The local government or region is not qualitatively equivalent to one or more of the comparison regions. This means that many systems or activities may be equal to the comparison counties, but more than half are not and the region or local government did not meet the goal. The Department may direct or prescribe efforts to assist the region in achieving their goal.
 - (IV) Qualitatively Not Equivalent (No-Fault) – The local government or region is not qualitatively equivalent to one or more of the comparison regions, but has mitigating circumstances like topography or geography that prevents qualitative equivalency.
2. If a region is determined qualitatively not equivalent to comparison regions, the Department shall work with the region and its member local governments to establish a timetable to achieve the goal and achieve compliance with the Act. This may include technical assistance (system design, improvements, and needs assessments), grant offerings, workshops, and other activities designed to assist the region in achieving the goal.
 3. If a region that has been found not to be qualitatively equivalent complies with the required recommendations for two years, it shall be deemed to have returned to compliance and not be subject to penalties.
- (d) Except as provided in subparagraph (a) of this paragraph, failure to comply with the applicable requirements of this rule will subject any entity to the penalties provided by T.C.A. §§ 68-211-816 and 68-211-861.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Rule 0400-11-01-.09 Waste Reduction and Planning is amended by adding new a paragraph (5) to read as follows:

(5) Reporting

- (a) Class I and transfer stations shall report to the Department, on forms provided by the department, the origin and tonnage of municipal solid on a quarterly basis within thirty (30) days after the end of the quarter.
- (b) Class III and Class IV landfills shall report to the Department, on forms provided by the department, the origin and tonnage of material data collected on an annual basis within thirty (30) days after the end of the calendar year for the calendar year just ending. Volume data shall be converted from cubic yards to tons at a conversion factor of 4 cubic yards per ton.
- (c) Recovered Materials Processing Facilities that manage over 100 tons per year of reclaimed, recovered or recycled materials or are publically owned shall report to the Department, on forms provided by the Department, the origin and tonnage by commodity type processed on a quarterly basis within thirty (30) days after the end of the quarter.
- (d) Material data collected from private sector recovered materials processing facilities shall be considered proprietary business information if requested by the private material recovery facility, and shall be protected as such and not be disclosed in a non-aggregated format. Data ownership information shall not be disclosed in this circumstance unless authorized by the data originator to do so.
- (d) All municipal solid waste planning regions shall submit by March 31st in the calendar year immediately following the reporting year their annual progress report by county. The region may request in writing prior to the due date an additional thirty (30) days to submit all required information. Additional time may be granted by the Commissioner for good cause shown.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

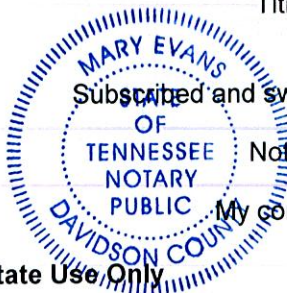
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: October 7, 2013

Signature: [Signature]

Name of Officer: Glen Pugh

Title of Officer: Solid Waste Program Manager



Subscribed and sworn to before me on: October 7, 2013

Notary Public Signature: [Signature]

My commission expires on: January 6, 2014

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Filed with the Department of State on: 10/8/13

[Signature]
Tre Hargett
Secretary of State

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STATE OF TENNESSEE